

110TH CONGRESS
2D SESSION

H. R. 6569

To amend the Public Health Service Act to ensure that victims of public health emergencies have meaningful and immediate access to medically necessary healthcare services.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2008

Mrs. CAPPS (for herself, Ms. MATSUI, and Mr. BUTTERFIELD) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act to ensure that victims of public health emergencies have meaningful and immediate access to medically necessary healthcare services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 This section may be cited as the “Public Health
5 Emergency Response Act of 2008”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) Since 2000, the Secretary of Health and
2 Human Services has declared that a public health
3 emergency existed nationwide in response to the at-
4 tacks of September 11th and in response to Hurri-
5 canes Katrina and Rita.

6 (2) In the event of a public health emergency,
7 compliance with recommendations to seek immediate
8 care may be critical to containing the spread of an
9 infectious disease outbreak or responding to a bio-
10 terror attack.

11 (3) Nearly sixteen percent of Americans lack
12 health insurance coverage.

13 (4) Fears of out-of-pocket expenses may cause
14 individuals to delay seeking medical attention during
15 a public health emergency.

16 (5) A public health emergency may disrupt
17 healthcare assistance programs for individuals with
18 chronic conditions, exacerbating the costs and risks
19 to their health.

20 (6) The uninsured could place great financial
21 strain on healthcare providers during a public health
22 emergency.

23 (7) The Department of Health and Human
24 Services Pandemic Influenza Plan projects that a
25 pandemic influenza outbreak could result in 45 mil-

1 lion additional outpatient visits, with 865,000 to
2 9,900,000 individuals requiring hospitalization, de-
3 pending upon the severity of the pandemic.

4 (8) Hospitals in the United States could lose as
5 much as \$3.9 billion in uncompensated care and
6 cash flow losses in the event of a severe pandemic.

7 (9) Under current statute, no dedicated mecha-
8 nism exists to reimburse providers for uncompen-
9 sated care during a public health emergency.

10 (b) PURPOSES.—The purposes of this Act are—

11 (1) to provide temporary emergency healthcare
12 coverage for uninsured and certain otherwise quali-
13 fied individuals in the event of a public health emer-
14 gency declared by the Secretary of Health and
15 Human Services;

16 (2) to ensure that healthcare providers remain
17 fiscally solvent and are not overburdened by the cost
18 of uncompensated care during a public health emer-
19 gency;

20 (3) to eliminate a primary disincentive for unin-
21 sured and certain otherwise qualified individuals to
22 promptly seek medical care during a public health
23 emergency; and

24 (4) to minimize delays in the provision of emer-
25 gency healthcare coverage by clarifying eligibility re-

1 requirements and the scope of such coverage and iden-
 2 tifying the funding mechanisms for emergency
 3 healthcare services.

4 **SEC. 3. EMERGENCY HEALTHCARE COVERAGE.**

5 (a) IN GENERAL.—Title III of the Public Health
 6 Service Act is amended by inserting after section 319K
 7 the following new section:

8 **“SEC. 319K-1. EMERGENCY HEALTHCARE COVERAGE.**

9 “(a) ACTIVATION AND TERMINATION OF EMER-
 10 GENCY HEALTHCARE COVERAGE.—

11 “(1) BASED ON PUBLIC HEALTH EMER-
 12 GENCY.—

13 “(A) IN GENERAL.—The Secretary may
 14 activate the coverage of emergency healthcare
 15 services under this section only if the Secretary
 16 determines that there is a public health emer-
 17 gency.

18 “(B) DETERMINATION OF PUBLIC HEALTH
 19 EMERGENCY.—For purposes of this section,
 20 there is a ‘public health emergency’ only if a
 21 public health emergency exists under section
 22 319.

23 “(2) CONSIDERATIONS.—In making a deter-
 24 mination under paragraph (1), the Secretary shall
 25 consider a range of factors including the following:

1 “(A) The degree to which the emergency is
2 likely to overwhelm healthcare providers in the
3 region.

4 “(B) The opportunity to minimize mor-
5 bidity and mortality through intervention under
6 this section.

7 “(C) The estimated number of direct cas-
8 ualties of the emergency.

9 “(D) The potential number of casualties in
10 the absence of intervention under this section
11 (such as in the case of infectious disease).

12 “(E) The potential adverse financial im-
13 pacts on local healthcare providers in the ab-
14 sence of activation of this section.

15 “(F) The need for healthcare services is of
16 sufficient severity and magnitude to warrant
17 major assistance under this section above and
18 beyond the emergency services otherwise avail-
19 able from the Federal Government.

20 “(G) Such other factors as the Secretary
21 may deem appropriate.

22 “(3) TERMINATION AND EXTENSION.—

23 “(A) IN GENERAL.—Coverage of emer-
24 gency healthcare services under this section

1 shall terminate, subject to subsection (c)(2),
2 upon the earlier of the following:

3 “(i) The Secretary’s determination
4 that a public health emergency no longer
5 exists.

6 “(ii) Subject to subparagraph (B), 90
7 days after the initiation of coverage of
8 emergency healthcare services.

9 “(B) EXTENSION AUTHORITY.—The Sec-
10 retary may extend a public health emergency
11 for a second 90-day period, but only if a report
12 to Congress is made under paragraph (4) in
13 conjunction with making such extension.

14 “(4) REPORT.—

15 “(A) IN GENERAL.—Prior to making an
16 extension under paragraph (3)(B), the Sec-
17 retary shall transmit a report to Congress that
18 includes information on the nature of the public
19 health emergency and the expected duration of
20 the emergency. The Secretary shall include in
21 such report recommendations, if deemed appro-
22 priate, regarding requesting Congress to pro-
23 vide a further extension of the public health
24 emergency period beyond the second 90-day pe-
25 riod.

1 “(B) REPORT CONTENTS.—A report under
2 subparagraph (A) shall include a discussion of
3 the healthcare needs of emergency victims and
4 affected individuals including the likely need for
5 follow-up care over a two-year period.

6 “(5) COORDINATION.—The Secretary shall en-
7 sure that the activation, implementation, and termi-
8 nation of emergency healthcare services under this
9 section in response to a public health emergency is
10 coordinated with all functions, personnel, and assets
11 of the Federal, State, local, and tribal responses to
12 the emergency.

13 “(6) MEDICAL MONITORING PROGRAM.—The
14 Secretary shall establish a medical monitoring pro-
15 gram for monitoring and reporting on healthcare
16 needs of the affected population over time. At least
17 annually during the 5-year period following the date
18 of a public health emergency, the Secretary shall re-
19 port to Congress on any continuing healthcare needs
20 of the affected population related to the public
21 health emergency. Such reports shall include rec-
22 ommendations on how to ensure that emergency vic-
23 tims and affected individuals have access to needed
24 healthcare services.

1 “(b) ELIGIBILITY FOR COVERAGE OF EMERGENCY
2 HEALTHCARE SERVICES.—

3 “(1) LIMITED ELIGIBILITY.—

4 “(A) IN GENERAL.—Eligibility for cov-
5 erage of emergency healthcare services under
6 this section for a public health emergency is
7 limited to individuals who—

8 “(i) are emergency victims who are
9 uninsured or otherwise qualified; or

10 “(ii) are affected individuals who are
11 uninsured.

12 “(B) DEFINITIONS.—For purposes of this
13 section with respect to a public health emer-
14 gency:

15 “(i) INSURED.—An individual is ‘in-
16 sured’ if the individual has group or indi-
17 vidual health insurance coverage or pub-
18 licly financed health insurance (as defined
19 by the Secretary).

20 “(ii) OTHERWISE QUALIFIED.—An in-
21 dividual is “otherwise qualified” if the in-
22 dividual is insured but the Secretary deter-
23 mines that the individual’s healthcare in-
24 surance coverage is not at least actuarially-
25 equivalent to benchmark coverage. In es-

1 tablishing such benchmark coverage, the
2 Secretary shall consider the standard Blue
3 Cross/Blue Shield preferred provider op-
4 tion service benefit plan described in and
5 offered under section 8903(1) of title 5,
6 United States Code.

7 “(iii) UNINSURED.—An individual is
8 ‘uninsured’ if the individual is not insured.

9 “(iv) EMERGENCY VICTIM.—An indi-
10 vidual is an ‘emergency victim’ with re-
11 spect to a public health emergency if the
12 individual needs healthcare services due to
13 injuries or disease resulting from the pub-
14 lic health emergency.

15 “(v) AFFECTED INDIVIDUAL.—An in-
16 dividual is an ‘affected individual’ with re-
17 spect to a public health emergency if—

18 “(I) the individual resides in an
19 assistance area designated for the
20 emergency (or whose residence was
21 displaced by the emergency) or, in the
22 case of such an emergency consti-
23 tuting a pandemic flu or other infec-
24 tious disease outbreak, who resides in
25 the area affected by the outbreak (or

1 whose residence was displaced by the
2 emergency); and

3 “(II) the individual’s ability to
4 access care or medicine is disrupted
5 as a result of the emergency.

6 “(2) PROCESS.—The Secretary shall establish a
7 streamlined process for determining eligibility for
8 emergency healthcare services under this section. In
9 establishing such process—

10 “(A) the Secretary shall recognize that in
11 the context of a public health emergency, indi-
12 viduals may be unable to provide identification
13 cards, healthcare insurance information, or
14 other documentation; and

15 “(B) the primary method for determining
16 eligibility for such services shall be an attesta-
17 tion provided to the healthcare provider by the
18 recipient of the services that the recipient meets
19 the eligibility criteria established under para-
20 graph (1)(A), with a standard alternative for
21 unattended minors and adults without the ca-
22 pacity to sign such an attestation form.

23 “(3) SERVICE DELIVERY.—Providers may com-
24 mence provision of emergency healthcare services for
25 an individual in the absence of any centralized en-

1 rollment process, if the provider has collected basic
2 information, specified by the Secretary, including the
3 individual's name, address, social security number,
4 and existing health insurance coverage (if any), that
5 establishes a prima facie basis for eligibility, except
6 that such information shall not be required in cases
7 where the individual is unable to provide the infor-
8 mation due to disability or incapacitation.

9 “(c) EMERGENCY HEALTHCARE SERVICES.—

10 “(1) IN GENERAL.—For purposes of this sec-
11 tion, the term ‘emergency healthcare services’—

12 “(A) means items and services for which
13 payment may be made under parts A and B of
14 the Medicare program;

15 “(B) includes prescription drugs (not cov-
16 ered under such part B) specified by the Sec-
17 retary under subsection (g), based on the
18 formularies of the two or more prescription
19 drug plans under part D of the Medicare pro-
20 gram with the largest enrollment;

21 “(C) may include drugs, devices, biologics,
22 and other healthcare products, if such products
23 are authorized for use by the Food and Drug
24 Administration pursuant to an alternate au-
25 thority, including the emergency use authority

1 under section 564 of the Federal Food, Drug,
2 and Cosmetic Act (21 U.S.C. 360bbb–3); and

3 “(D) for an affected individual, is limited
4 to those items and services described under sub-
5 paragraphs (A), (B) or (C) that a third-party
6 payor, such as a government program or chari-
7 table organization, reimbursed or otherwise pro-
8 vided to an affected individual during the three
9 months prior to the declaration of the public
10 health emergency.

11 “(2) NOT MEDICARE, MEDICAID, OR SCHIP BEN-
12 EFITS.—The emergency healthcare services provided
13 under this section are not benefits under Medicare,
14 Medicaid or SCHIP. Nothing in this section shall be
15 interpreted as altering or otherwise conflicting with
16 titles XVIII, XIX, or XXI of the Social Security
17 Act.

18 “(3) COMPLETION OF TREATMENT FOR EMER-
19 GENCY VICTIMS.—Notwithstanding termination of
20 the coverage of emergency healthcare services pursu-
21 ant to subsection (a)(4), the Secretary may identify
22 a subgroup of emergency victims on a case-by-case
23 basis or otherwise to continue receiving coverage of
24 emergency healthcare services for up to an addi-
25 tional 60 days. Such emergency healthcare services

1 provided after the termination date shall be limited
2 to services and items that are medically necessary to
3 treat an injury or disease resulting directly from the
4 public health emergency involved.

5 “(d) COVERED PROVIDERS.—

6 “(1) IN GENERAL.—Subject to paragraph (2),
7 healthcare services are not covered under this sec-
8 tion unless they are furnished by a healthcare pro-
9 vider that—

10 “(A) has a valid provider number under
11 the Medicare program, the Medicaid program,
12 or SCHIP;

13 “(B) is in good standing with such pro-
14 gram; and

15 “(C) is not excluded from participation in
16 a Federal healthcare program (as defined in
17 section 1128B(f) of the Social Security Act, 42
18 U.S.C. 1320a–7b(f)).

19 “(2) WAIVER AUTHORITY.—

20 “(A) IN GENERAL.—The Secretary may by
21 regulation waive certain requirements for pro-
22 vider enrollment that otherwise apply under the
23 Medicare or Medicaid program or under SCHIP
24 to ensure an adequate supply of healthcare pro-
25 viders (such as nurses and other healthcare pro-

1 viders who do not typically participate in the
2 Medicare or Medicaid program or SCHIP) and
3 services in the case of a public health emer-
4 gency. Such requirements may include the re-
5 quirement that a licensed physician or other
6 healthcare professional holds a license in the
7 State in which the professional provides services
8 or is otherwise authorized under State law to
9 provide the services involved.

10 “(B) REPORT ON EMERGENCY SYSTEM
11 FOR ADVANCE REGISTRATION OF VOLUNTEER
12 HEALTH PROFESSIONALS (ESAR-VHP).—Not
13 later than 180 days after the date of the enact-
14 ment of this section, the Secretary shall submit
15 to Congress a report on the number of volun-
16 teers, by profession and credential level, en-
17 rolled in the Emergency System for Advance
18 Registration of Volunteer Health Professionals
19 (ESAR-VHP) that will be available to each
20 State in the event of a public health emergency.
21 The Secretary shall determine if the number of
22 such volunteers is adequate for interstate de-
23 ployment in response to regional requests for
24 volunteers and, if not, shall include in the re-
25 port recommendations for actions to ensure an

1 adequate surge capacity for public health emer-
2 gencies in defined geographic areas.

3 “(3) MEDICARE AND MEDICAID PROGRAMS AND
4 SCHIP DEFINED.—For purposes of this section:

5 “(A) The term ‘Medicare program’ means
6 the program under parts A, B, and D of title
7 XVIII of the Social Security.

8 “(B) The term ‘Medicaid program’ means
9 the program of medical assistance under title
10 XIX of such Act.

11 “(C) The term ‘SCHIP’ means the State
12 children’s health insurance program under title
13 XXI of such Act.

14 “(e) PAYMENTS AND CLAIMS ADMINISTRATION.—

15 “(1) PAYMENT AMOUNT.—The amount of pay-
16 ment under this section to a provider for emergency
17 healthcare services shall be equal to 100 percent of
18 the payment rate for the corresponding service
19 under part A or B of the Medicare program, or, in
20 the case of prescription drugs and other items and
21 services not covered under either such part, such
22 amount as the Secretary may specify by rule. Such
23 a provider shall not be permitted to impose any cost-
24 sharing or to balance bill for services furnished
25 under this section.

1 “(2) USE OF MEDICARE CONTRACTORS.—The
2 Secretary shall enter into arrangements with Medi-
3 care administrative contractors under which they
4 process claims for emergency healthcare services
5 under this section using the claim forms, codes, and
6 nomenclature in effect under the Medicare program.

7 “(3) APPLICATION OF SECONDARY PAYER
8 RULES.—In the case of payment under this section
9 for emergency healthcare services for otherwise
10 qualified individuals who have some health insurance
11 coverage with respect to such services, the adminis-
12 trative contractors under paragraph (2) shall submit
13 a claim to the entity offering such coverage to re-
14 coup all or some of such payment, reflecting what-
15 ever amount the entity would normally reimburse for
16 each covered service. The provisions of section
17 1862(b) of the Social Security Act (42 U.S.C.
18 1395y(b)) shall apply to benefits provided under this
19 section in the same manner as they apply to benefits
20 provided under the Medicare program.

21 “(4) PAYMENTS FOR EMERGENCY HEALTHCARE
22 SERVICES AND RELATED COSTS.—Payments to pro-
23 vide, and costs to administer, emergency healthcare
24 services under this section shall be made from the

1 Public Health Emergency Fund, as provided under
2 subsection (f)(1).

3 “(5) ATTESTATION REQUIREMENT.—No pay-
4 ment shall be made under this section to a provider
5 for emergency healthcare services unless the provider
6 has executed an attestation that—

7 “(A) the provider has notified the adminis-
8 trative contractor of any third-party payment
9 received or claims pending for such services;

10 “(B) the recipient of the services has exe-
11 cuted an attestation or otherwise satisfies the
12 eligibility criteria established under subsection
13 (b); and

14 “(C) the services were medically necessary.

15 “(f) PUBLIC HEALTH EMERGENCY FUND; FRAUD
16 AND ABUSE PROVISIONS.—

17 “(1) THE PUBLIC HEALTH EMERGENCY
18 FUND.—There is authorized to be appropriated to
19 the Public Health Emergency Fund (established
20 under section 319(b)) such sums as may be nec-
21 essary under this section for payments to provide
22 emergency healthcare services and costs to admin-
23 ister the services during a public health emergency.

1 “(2) NO USE OF MEDICARE FUNDS.—No funds
2 under the Medicare program shall be available or
3 used to make payments under this section.

4 “(3) FRAUD AND ABUSE PROVISIONS.—Pro-
5 viders and recipients of emergency healthcare serv-
6 ices under this section shall be subject to the Fed-
7 eral fraud and abuse protections that apply to Fed-
8 eral healthcare programs as defined in section
9 1128B(f) of the Social Security Act.

10 “(g) RULEMAKING.—The Secretary may issue regu-
11 lations to carry out this section and shall use a negotiated
12 rulemaking process to advise the Secretary on key issues
13 regarding the implementation of this section.

14 “(h) PUBLIC HEALTH EMERGENCY PLANNING AND
15 THE EDUCATION OF HEALTHCARE PROVIDERS AND THE
16 GENERAL POPULATION.—

17 “(1) PLANNING FOR COVERAGE OF EMERGENCY
18 HEALTHCARE SERVICES IN PUBLIC HEALTH EMER-
19 GENCIES.—The Secretary shall, within 90 days after
20 the date of the enactment of this section, initiate
21 planning to carry out this section, including plan-
22 ning relating to implementation of the subsection (e)
23 in the event of activation of emergency healthcare
24 coverage.

1 “(2) OUTREACH AND PUBLIC EDUCATION CAM-
2 PAIGN.—The Secretary shall conduct an outreach
3 and public education campaign to inform healthcare
4 providers and the general public about the avail-
5 ability of emergency healthcare coverage under this
6 section during the period of the emergency. Such
7 campaign shall include—

8 “(A) an explanation of the emergency
9 healthcare coverage program under this section;

10 “(B) claim forms and instructions for
11 healthcare providers to use when providing cov-
12 ered services during the emergency period; and

13 “(C) special outreach initiatives to vulner-
14 able and hard-to-reach populations.

15 “(3) AUTHORIZATION OF APPROPRIATIONS.—
16 There is authorized to be appropriated for each fis-
17 cal year (beginning with fiscal year 2009)
18 \$7,000,000 to carry out paragraphs (1) and (2) dur-
19 ing the fiscal year.

20 “(i) APPLICATION OF POLICIES UNDER OTHER FED-
21 ERAL HEALTHCARE PROGRAMS.—As specified in sub-
22 sections (c) through (e), the Secretary may adopt in whole
23 or in part the coverage, reimbursement, provider enroll-
24 ment, and other policies used under the Medicare program
25 and other Federal healthcare programs in administering

1 emergency healthcare services under this section to the ex-
2 tent consistent with this section.”.

3 (b) APPLICATION OF PUBLIC HEALTH EMERGENCY
4 FUND.—Section 319(b)(1) of such Act (42 U.S.C.
5 247d(b)(1)) is amended—

6 (1) by inserting “and section 319K–1” after
7 “subsection (a)”; and

8 (2) by striking “such subsection” and inserting
9 “subsection (a)”.

○